

**BEFORE THE INDIANA
CASE REVIEW PANEL**

In The Matter of Deaun Williams,)	
Petitioner)	
And)	CAUSE NO. 050916-40
The Indiana High School Athletic Assoc. (IHSAA),)	
Respondent)	
)	
Review Conducted Pursuant to)	Open Hearing
I.C. 20-26-14 <i>et seq.</i>)	

FINDINGS OF FACT, CONCLUSIONS OF LAW, AND ORDER

Procedural History

Petitioner is a 17-year-old senior (d/o/b April 22, 1988) and presently attends Ben Davis High School (Ben Davis), a public high school located in the Metropolitan School District of Wayne Township (MSD Wayne Township). He previously attended Southport High School (Southport) in the Metropolitan School District of Perry Township (MSD Perry Township) for his freshman, sophomore and junior years. As a sophomore, Petitioner participated on the varsity baseball and football teams. During his junior year, Petitioner participated on the varsity baseball, football, and track and field teams. Prior to his senior year, Petitioner resided with both of his parents within the attendance area of the MSD Perry Township. After his junior year, his parents separated. Although Petitioner's parents have joint legal custody of Petitioner, his father has physical custody of Petitioner. Petitioner now resides with his father within the attendance area of the MSD Wayne Township. During the summer of 2005, Petitioner enrolled in Ben Davis High School.

On August 19, 2005, Petitioner, through the Assistant Athletic Director at Ben Davis, requested a determination of his eligibility to participate in athletics during the 2005-2006 school year. The Respondent, by its Commissioner, on August 25, 2005, found Petitioner ineligible pursuant to the Respondent's Rule **C-19-4**. Rule **C-19-4** addresses transfers for primarily athletic reasons, and provides, in part, as follows:

To preserve the integrity of interschool athletics and to prevent or minimize recruiting, proselytizing and school 'jumping' for athletic reasons, regardless of the circumstances, student athletes who transfer from one school to a new school for primarily athletic reasons or as a result of undue influence will become ineligible to participate in interschool athletics

in the new school for a period not to exceed 365 days from the date the student enrolls at the new school . . .¹

Petitioner, through the Assistant Athletic Director, requested a review of the Commissioner's decision by Respondent's Review Committee. This request was made on August 25, 2005. The Respondent's Review Committee conducted its review on September 1, 2005. Although the Review Committee determined that it did not conclude that Petitioner's move was not *bona fide*,² it nonetheless determined the move was primarily for athletic reasons.³ The Review Committee issued its decision on September 12, 2005, upholding the Commissioner's decision declaring Petitioner ineligible to participate in interscholastic athletics until July 30, 2006.

APPEAL TO THE CASE REVIEW PANEL

Petitioner appealed to the Indiana Case Review Panel⁴ on September 16, 2005. The parties were notified that date of their respective hearing rights. The record from the investigation and review by Respondent was requested and received. The record was copied and provided to each

¹Respondent has promulgated a series of by-laws as a part of its sanctioning procedures for interscholastic athletic competition. Some by-laws apply to specific genders, but many of the by-laws are "common" to all potential athletes and, hence, begin with "C." **Rule C-19-4** is "common" to both genders. (All references are to the 2005-2006 by-laws of Respondent.)

²Respondent's by-laws provide the following definition: **Bona fide change of residence** - Determination of what constitutes a 'bona fide' change of residence depends upon the facts in each case, however, to be considered, the following facts **must** exist:

- a. the original residence must be abandoned as a residence; that is, sold, rented or disposed of, or in the process of being disposed of as a residence and must not be used as a residence by **any** member of the student's immediate family; and
- b. the student's entire immediate family must make the change and take with them the household goods and furniture appropriate to the circumstances. For eligibility purposes, a single family unit may not maintain two or more residences.
- c. the change of residence must be genuine, without fraud or deceit, and with permanent intent.

³Respondent's by-laws provide the following definition: **Transfer for primarily athletic reasons** - A transfer for primarily athletic reasons includes, but is not limited to:

- a. a transfer to obtain the athletic advantage of a superior, or inferior, athletic team, a superior athletic facility or a superior coach or coaching staff;
- b. a transfer to obtain relief from a conflict with the philosophy or action of an administrator, teacher or coach relative to athletics;
- c. a transfer seeking a team consistent with the student's athletic abilities;
- d. a transfer to obtain a means to nullify punitive action taken by the previous school.

⁴The Case Review Panel (CRP) is a nine-member adjudicatory body appointed by the Indiana State Superintendent of Public Instruction. The State Superintendent or her designee serves as the chair. The CRP is a public entity and not a private one. Its function is to review final student-eligibility decisions of the IHSAA when a parent or guardian so requests. Its decision does not affect any By-Law of the IHSAA but is student-specific. In like manner, no by-law of the IHSAA is binding on the CRP. The CRP, by statute, is authorized to uphold, modify, or nullify any student eligibility decision by the Respondent. I.C. 20-26-14-6(c)(3).

participating member of the CRP. The parent notified the CRP on September 19, 2005, that he wished for the proceedings in this matter to be open to the public. Hearing was set for October 6, 2005, at the State House, Indianapolis, Indiana. The parties received timely notice of the proceedings.

On October 6, 2005, the CRP convened.⁵ The Petitioner appeared and was represented counsel. The Respondent appeared by counsel. Prior to the hearing, the Respondent submitted one group exhibit. Petitioner reserved the right to object on the basis of relevancy at the time the exhibit was discussed during the hearing. No objections were made to the exhibit.

Testimony was provided under oath or by affirmation. In consideration of the testimony and record, the following Findings of Fact and Conclusions of Law are determined.

FINDINGS OF FACT

1. Petitioner is a 17-year-old senior (d/o/b April 22, 1988) enrolled in Ben Davis High School within the MSD Wayne Township school corporation.
2. He attended Southport High School in the MSD Perry Township school corporation for his freshman, sophomore and junior years where he participated on the varsity baseball and football teams during his sophomore year and the varsity baseball, football, and track and field teams during his junior year.
3. Petitioner is the youngest of four brothers who attended and played sports at Southport High School. Two of Petitioner's brothers played baseball for Petitioner's baseball coach at Southport. Petitioner's father has been involved in supporting all of his sons' athletic endeavors at Southport and has been both a vocal critic and supporter of his sons' coaches at Southport for nine years. Petitioner's baseball coach at Southport acknowledged that other parents also complain, on a weekly basis, about coaching decisions (including playing time). The Southport coach acknowledged that such parental criticism is an expected part of coaching.
4. Petitioner is an outstanding baseball player and has come to the attention of college and professional scouts. Petitioner has participated on a summer travel baseball team for a number of years. Participation on the travel team prevented Petitioner from playing more than a couple of games for Southport during its summer baseball program. During Petitioner's last game for Southport, he was benched after questioning an umpire's call.

⁵Six members were present: Michael E. Pettibone, Chair; Scott F. Eales; James Perkins, Jr.; Brenda K. Sebastian; Earl H. Smith, Jr.; and Melissa Starry.

5. Although Petitioner has struggled academically as a student, he is well-behaved, has not been a discipline problem, and there are no disciplinary actions pending concerning Petitioner.
6. During the summer of 2005, Petitioner's parents separated. His father moved out of the marital residence in mid-June and moved into Petitioner's grandmother's home which is located within the attendance area of the MSD Wayne Township. After much thought, discussion with family, and consultation with their pastor, Petitioner's parents agreed Petitioner would reside with his father. A preliminary separation agreement awarding custody of Petitioner to his father was approved by the Marion Superior Court on August 11, 2005. Petitioner's parents believed that a 17-year-old African-American male should be with his father. Petitioner would also have more family support and structure residing with his father as the father, grandmother or uncle would be present in the home after school and in the evenings. Petitioner's mother works at night and Petitioner would be unsupervised were he to reside with his mother. The father's residence is also closer to Petitioner's church which provides additional support and tutoring services which would be of benefit to Petitioner. Petitioner moved into his father's residence upon his return to Indianapolis after playing on the travel baseball team on July 28, 2005.
7. On July 30, 2005, Petitioner's father enrolled Petitioner in Ben Davis High School. After enrolling, Petitioner and his father were advised to see the athletic director to fill out the IHSAA Athletic Transfer Report. Petitioner's father met with the assistant athletic director on August 2, 2005, and filled out the transfer report. Neither Petitioner nor his father met the coaches or athletic staff at Ben Davis prior to enrolling in Ben Davis High School. Petitioner did not practice with any Ben Davis Team prior to enrolling in Ben Davis High School.
8. Although Petitioner has been practicing with the Ben Davis football team, he has not yet participated in any games as Respondent determined he was not eligible. He has received the benefit of the study table provided for the football team at Ben Davis and tutoring at his church. Since enrolling in Ben Davis, Petitioner's study habits have improved as have his grades.
9. Southport, in filling out the Transfer Report form, in response to the question as to why the student withdrew, indicated that it's beliefs were unfounded but it was undoubtedly for athletic reasons. Southport continued to offer opinions that the move was athletically motivated, and further argued that, as Petitioner has "senior rights" he should continue to attend Southport even though he now resides in the Ben Davis attendance area and has legal settlement within MSD Wayne Township. Southport offered the opinion the move was temporary, although no facts were presented to support this opinion.

CONCLUSIONS OF LAW

1. Although the IHSAA, the Respondent herein, is a voluntary, not-for-profit corporation and is not a public entity, its decisions with respect to student eligibility to participate in interscholastic athletic competition are “state action” and for this purpose makes the IHSAA analogous to a quasi-governmental entity. *IHSAA v. Carlberg*, 694 N.E.2d 222 (Ind. 1997), *reh. den.* (Ind. 1998). The Case Review Panel has been created by the Indiana General Assembly to review final student eligibility decisions with respect to interscholastic athletic competition. I.C. 20-26-14 *et seq.* The Case Review Panel has jurisdiction when a parent, guardian, or eligible student invokes the review function of the Case Review Panel. In the instant matter, the IHSAA has rendered a final determination of student-eligibility adverse to the student. Petitioner has timely sought review. The Case Review Panel has jurisdiction to review and determine this matter. The Case Review Panel is not limited by any by-law of Respondent. The Case Review Panel is authorized by statute to either uphold, modify, or nullify the Respondent’s adverse eligibility determination.
2. Any Finding of Fact that may be considered a Conclusion of Law shall be so considered. Any Conclusion of Law that may be considered a Finding of Fact may be considered as such.
3. Petitioner transferred schools with a corresponding change of residence. A student who transfers with a corresponding change of residence to a new district by the student’s custodial parent may be declared immediately eligible provided there is a *bona fide* change of residence. **Rule C-19-5.** Respondent’s Review Committee’s determination that it did not conclude that Petitioner’s move was not *bona fide* has not been challenged on appeal to the Case Review Panel. Petitioner meets the criteria of **Rule C-19-5.**
4. A student may also be declared immediately eligible if the student transfers with a corresponding change of residence by the student into a new district to reside with a parent. Moves between divorced or separated parents may meet this criteria. **Rule C-19-6.1.** Respondent’s parents separated while he was playing baseball on a traveling team. Upon his return at the end of the travel season, he moved into his father’s residence. Petitioner meets the criteria of **Rule C-19-6.1.**
5. Respondent argued the move was athletically motivated based upon disagreements between Petitioner’s father and the baseball coach. Petitioner’s father has been actively involved for nine years with all four of his sons’ sports programs at Southport, and has been vocal with the coaching staff throughout that time. There is no evidence that any disagreement with coaching philosophy or any action of a coach, teacher or administrator relative to athletics motivated the move.” Petitioner’s move was not athletically motivated.

DISCUSSION

Respondent further argues the move was athletically motivated because Petitioner has “senior rights. Respondent appears to argue that Petitioner would somehow be required to attend Southport for his senior year unless he shows compelling reasons to attend Ben Davis. This is an erroneous construction of the law pertaining to legal settlement. “Senior rights” refers to an exception to the general requirement that a student must have legal settlement within a school corporation to be able to attend school without the payment of tuition. A student’s “legal settlement” is generally in the school district in which the custodial parent(s) resides. If a student’s legal settlement changes after the student has begun attending school in a school corporation, the effective date of the change may, *at the election of the parent* (or student if the student is at least 18 years of age) be extended until the end of that semester. However, that election, where a student has completed grade 11 shall extend to the end of the following school year in grade 12. I.C. 20-26-11-2(7). Petitioner has legal settlement within the MSD Wayne Township. Ben Davis is his home school. Although Petitioner could attend Southport without the payment of tuition for his senior year, that election, an exception to the legal settlement requirements, is solely within the discretion of Petitioner’s parents.

ORDER

1. Respondent’s determination that Petitioner shall be ineligible is reversed. Petitioner shall have full eligibility. This was determined by a vote of 5-1 on the second submission of the question.

DATE: October 17, 2005

/s/ Michael E. Pettibone
Case Review Panel

APPEAL RIGHT

Any party aggrieved by the decision of the Case Review Panel has thirty (30) calendar days from receipt of this written decision to seek judicial review in a civil court with jurisdiction, as provided by I.C. 4-21.5-5-5.